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IN THE

# Supreme Court of the United States

**October Term, 1954.**

No. 183

SANTO CAMINITO,

*Petitioner,*

*against*

THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent.*

**Petition for a Writ of Certiorari to the Court of Appeals of the State of New York.**

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THE REPORTER COMPANY, INC., New York 7, N. Y.—REctor 2-6978—1954

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# Supreme Court of the United States

OCTOBER TERM, 1954.

No. .

SANTO CAMINITO,
Petitioner,
against
THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Santo Caminito, respectfully shows the following:

### The Determinations in the Courts Below.

Petitioner was tried and convicted on March 2, 1942, in the County Court of Kings County, State of New York, for the crime of murder in the first degree, and based upon said conviction is presently serving a term of life imprisonment in the Auburn State Prison, Auburn, New York.

Subsequent to his conviction, the following appellate proceedings were had:

An appeal was taken to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, which Court affirmed the judgment of conviction on December 22, 1942 (265 App. Div. 960). No opinion was rendered, but in concurring the Presiding Justice made a short memorandum (appendix).

An appeal was taken to the Court of Appeals of the State of New York, which Court likewise affirmed the judgment of conviction, on July 20, 1943 (291 N. Y. 541).

The petitioner thereafter moved in person for a re-argument of said appeal to the Court of Appeals. The motion was denied on March 18, 1948 (297 N. Y. 882).

A second application for re-argument was thereafter denied by the Court of Appeals on June 3, 1954 (not yet reported).

No opinions were written in connection with any of the foregoing determinations.

**Basis of Jurisdiction.**

(i) The petition seeks a review of a final judgment of the Court of Appeals of the State of New York rendered October 24, 1942, which judgment was entered in the office of the County Clerk, Kings County, on January 7, 1943.

(ii) A motion to re-argue the appeal was made on May 17, 1954, which motion was denied on June 3, 1954. The said application for re-argument requested that a determination of rights previously adjudicated be altered, and raised questions of substance. The motion for a rehearing having been entertained (the disposition was a denial, not a dismissal of the motion), the ninety-day limitation during which this Court may entertain this petition begins to run from the date of such denial.

*Citizens Bank v. Offerman* (1919), 249 U. S. 448.
*U. S. v. Seminole Nation* (1936), 299 U. S. 417, 421.
*Leishman v. Assoc. Electric Co.* (1942), 318 U. S. 205.

As stated in the *Citizens Bank v. Offerman* case:

> "A petition to rehear was overruled May 18, 1917, and at that time the judgment below became final for purposes of review here. *Andrews v. Virginian Ry. Co.*, 248 U. S. 272; *Chicago Great Western R. R. Co. v. Basham, ante*, 164. This writ of error was applied for July 13, 1917—within three months" (p. 449).
>
> • • • • • •
>
> "Where a petition for rehearing is entertained the judgment does not become final for purposes of our review until such petition has been denied or otherwise disposed of and the three months' limitation begins to run from date of said denial or other disposition" (p. 450).

(iii) This Court has jurisdiction of this petition for certiorari under Sections 1257 (3) and 2101 (c) and (d), Title 28, United States Code, and Rule 38½ of the Rules of this Court (as well as Rule 22 of the Revised Rules of this Court, effective July 1, 1954), the petition being one to review the final judgment of a state court of last resort.

(iv) The Court of Appeals of the State of New York has decided federal questions of substance in a manner not in accord with applicable decisions of this Court.

## The Questions Presented for Review.

1. Was there a violation of due process in admitting into evidence, over objection, confessions made by petitioner, where the undisputed evidence shows the following:

(a) that petitioner maintained his innocence for a period of twenty-seven hours;

(b) that the police officers committed a violation of the laws of New York in failing to take petitioner before a magistrate without unnecessary delay;

(c) that petitioner was intensively questioned for hours at a time, throughout his detention, by five or six police officers and that at least ten police officers participated in his questioning at various times;

(d) that petitioner was held incommunicado for forty hours and was kept unavailable to members of his family and a lawyer retained by his family, all of whom unsuccessfully attempted to see him;

(e) that petitioner was subjected to physical torture by being kept overnight in a cell without sleeping facilities;

(f) that petitioner was subjected to psychological pressures by being confronted by three detectives (not known by him to be detectives), each of whom falsely pretended to identify him as a participant in the crime;

(g) that petitioner was held without being arraigned for a period of forty hours;

(h) that there was no evidence identifying petitioner as a participant in the crime other than the petitioner's confessions.

2. On the basis of the foregoing facts, was petitioner unlawfully compelled to be a witness against himself?

**Applicable Constitutional and Statutory Provisions.**

(A) Constitution of the United States, Section 1 of the Fourteenth Amendment:

> "* * * nor shall any State deprive any person of life, liberty or property, without due process of law; * * *."

(B) Constitution of the United States, Fifth Amendment:

> "* * * nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law * * *."

(C) Constitution of the State of New York, Article 1, Section 6:

> "* * * nor shall he be compelled in any criminal case to be a witness against himself;
>
> "* * * No person shall be deprived of life, liberty or property without due process of law."

(D) Code of Criminal Procedure of the State of New York:

> (1) "Section 395. Confession of Defendant, When Evidence, and its Effect.
>
> "A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of

the district attorney, that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed."

(2) "Section 165. Defendant, Upon Arrest, to be Taken Before Magistrate.

"The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night."

(E) Penal Law of the State of New York:

"Section 1844. Delaying to Take Person Arrested for Crime Before a Magistrate.

"A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such persons before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor."

(F) New York City Criminal Courts Act:

"Section 101. Courts to be Held Daily in Each District.

"Except as otherwise provided in this section, there shall be a city magistrate's court held daily in every court district, and unless otherwise directed by the chief city magistrate, each city magistrate's court shall be open every day at nine o'clock in the morning, and shall not be closed before four o'clock in the afternoon, and the city magistrate assigned thereto shall be in attendance thereat except during a reasonable recess."

**Statement of Undisputed Material Facts.**

The petitioner was convicted as an alleged participant in the murder of one Murray Hammerof, who was shot on February 16, 1941, and died on February 18, 1941.

Petitioner was taken into custody by the police at 6 P. M. on Sunday, May 11, 1941, almost three months later.

In setting forth the facts upon which this petition rests, we have deliberately separated undisputed facts from other assertions claimed by petitioner at the trial, in order to simplify and clarify the issues upon which this petition rests. Accordingly, we do not belabor the disputed questions of fact as to whether petitioner was physically beaten, threatened or kept without food for a period of almost two days, as to which facts there is ample evidence in the record. Instead, this application is confined to the facts which are clearly undisputed, all of which facts come from the testimony of the People's witnesses. References hereafter given are from the folios of the record on appeal submitted to the Court of Appeals of the State of New York.

The following are the undisputed facts, as testified to by the witnesses for the State of New York:

1) Defendant was taken into custody on Sunday, May 11, 1941, at 6 P. M. (147).

2) Commencing about 9 P. M. of said date, he was continuously interrogated by five or six police officers for a period of approximately five hours, until 2 A. M. the following morning, Monday, May 12th (311, 499, 502-537, 1061).

3) At 3 A. M. on Monday, May 12th, petitioner was locked in a cell in which there was no heat, no bed, no pillow and no blankets, but only a plain, narrow board hanging from the wall (306, 319, 549).

4) At 10 A. M. on Monday, May 12th, the questioning was resumed. The interrogation continued all day, with several detectives taking turns (328).

5) Members of defendant's family, his friends, and an attorney retained by the family, called at the station house where petitioner was kept and tried to get information concerning his whereabouts. The police officers knew the facts, but kept him incommunicado. The interrogation continued. No one, including his lawyer, was permitted to see him until he was arraigned 40 hours after being taken into custody (548, 1063-70).

6) During the afternoon of Monday, May 12th, two women and a man were brought in to face petitioner. He was not told that they were detectives. Each falsely pretended to identify him as the person who was sitting at the wheel of the automobile at the time of the shooting (83, 796-825, 835-853).

7) About 9 P. M., Monday, May 12th, twenty-seven hours after having been taken into custody, petitioner signed a confession (686-693). A second confession was thereafter given to a District Attorney a short time thereafter (870-875).

8) About 2:30 or 3 A. M. the following morning, Tuesday, May 13th, petitioner was placed under arrest (417).

9) Petitioner was brought before a magistrate later that same day, more than forty hours after having first been taken into custody (147, 1074). The arraignment could and should have been held long before that time. The police officers knew that the courts were open for that purpose (1105).

10) No evidence, other than the confessions heretofore referred to were offered at the trial to identify petitioner as a participant in the murder (1181).

In order to establish that our assertions are justified, and to avoid the necessity of a complete review of the

record, we quote briefly from the testimony of the People's witnesses:

*Defendant was questioned for hours by relays of detectives:*

"Q. And who did the questioning? A. I spoke to him for a while; Detective Manus spoke to him; Lieutenant Meenahan, and later on the captain of the Homicide Squad, Captain McGowan" (212).

* * * * * *

"Q. What time did this questioning begin, about? A. About nine o'clock" (213).

* * * * * *

"Q. Until what time? A. About two o'clock in the morning" (215).

* * * * * *

"Q. About how many came between the time you just said and the time you left? A. Detective Mitchell, Manes, Garvey, Lieutenant Meenahan, myself, Mitchell from the Homicide Squad, and then later on that night Detective Gavin, Captain McGowan and Captain Dowdell" (309).

* * * * * *

"Q. And by whom were the defendants questioned at that time? A. By Lieutenant Meenahan, Detective Kenny, Detective Mitchell and myself" (499).

* * * * * *

"Q. How many detectives were working up until 2 A. M. in the morning on this case? A. Just those that started at 5:15. There was myself, Kenny, Manes, Garvey and Mitchell" (1061).

* * * * * *

"Q. During all this time that I just related, there were at least a half a dozen detectives in the station house working on this particular case with you? A. Well, not Sunday evening.

"Q. Sunday evening you told us there were four besides yourself? A. Five of us, that is right. Then Monday morning there were quite a number of detectives there on other cases" (1140-1141).

* * * * * *

"Q. Would you say that at least the five that worked Sunday, with some additions, worked Monday? A. Yes, then we would add Captain Dowdell Monday and Captain McGowan Monday" (1141).

*Defendant was kept in custody overnight with no sleeping facilities—a form of physical torture.*

"Q. And at two o'clock in the morning, what if anything occurred? A. Put them back in the cells and I went home and went to bed and they went to sleep in the cells" (216).

* * * * * *

"Q. There were cots in the cells? A. There is a big bench" (216).

* * * * * *

"Q. Did you see the cells at the Lawrence Avenue station, the cells where they keep prisoners? A. Yes.

"Q. Personally? A. Yes.

"Q. Is there a bed in them? A. There is a big wooden bench where they lie down.

"Q. There is no bed? A. No spring and mattress.

"Q. Just a wooden bench? A. Yes.

"Q. No blankets or pillow? A. No" (306).

* * * * * *

"Q. Going back to the cells of the Lawrence Avenue station, did you personally see any blanket there that night? A. I did not" (319).

* * * * * *

"Q. Did you put him in a cell at the 62nd? A. I did.

"Q. Personally? A. Yes.

"Q. Each one in a separate cell? A. That is right.

"Q. Bonino and Caminito? A. That is right.

"Q. Was there a bench in that cell? A. There is.

"Q. No bed? A. No bed.

"Q. No blanket, no pillow? A. No" (548).

*Defendant was not permitted to see members of his family or a lawyer who attempted to see him.*

"Q. Did any police officer tell you that the family of Bonino or Caminito were around the 62nd Precinct Sunday night and making inquiry for them? A. I had seen some people there.

"Q. Did they speak to you personally? A. No.

"Q. Did anyone speak to you about the family desiring to see them? A. I know that there were some friends there. Whether they were family or friends, I know they were there.

"Q. They did not see the defendant? A. No, sir, they did not.

"Q. Nor the defendants them? A. No, sir" (1063-1064).

* * * * * *

The supervising police officer, John J. Meenahan, knew that petitioner's lawyer, as well as his family and friends, were trying to see him during the period of unlawful interrogation and detention.

"Q. So that until 2 A. M. on May 12, 1941, you, as the supervising officer, did not inform the District Attorney's office that you had three suspects at the station house? A. I did not."

* * * * * *

"Q. Up until 2 A. M. did any lawyer by the name of Spano make any inquiry from you, or in your presence from anyone, concerning his desire to see the defendants?

"The Court: That is a rather ambiguous question, isn't it? You mean did a lawyer by the name of Spano?

"Mr. Barshay: I said 'any lawyer by the name of Spano.'

"The Court: Yes.

"Q. A lawyer by the name of Spano? A. I had knowledge that he was making inquiries.

"Q. You had personal knowledge of that? A. I did.

"Q. And, Lieutenant, was he permitted to see the defendants? A. No, sir, he was not" (1068-1069).

• • • • • •

"Q. He did not see them, to your personal knowledge, until they were arraigned? A. That is right" (1070).

*The police officers violated the statutes against unlawful delay in arraignment.*

"Q. You knew the District Attorney's office was open 24 hours a day? A. I did" (1064).

• • • • • •

"Q. You knew that the Night Court was open Sunday night, May 11, 1941? A. Yes, sir, I knew that.

"Q. You knew there was the Felony Court open Monday, May 12, 1941? A. Yes, sir.

"Q. You knew there was a Night Court open May 12, 1941? A. That is right" (1106).

*A period of 40 hours elapsed between taking the defendant into custody and arraigning him before a Magistrate.*

"Q. Detective Mitchell, did you arrest the defendant, Santo Caminito? A. Yes, I picked him up for investigation.

"Q. At what time? A. On May 11th at about 6:00 P. M." (147).

• • • • • •

"Q. Were you present at the arraignment the following morning (Tuesday)? A. No, I was there until they were printed and booked, and then I did not see him after that" (1054).

• • • • • •

"Q. Lieutenant Meenahan, from May 11, 1941, until they were arraigned, May 13, 1941, did Lieutenant McNally work on this case with you? A. He was in and out of the office and he was working on other angles on the case" (1074).

• • • • • •

"Q. You knew they were not arraigned that morning (Monday)? A. Our investigation was not completed.

"Q. Captain, will you answer the question, please? You knew they were not arraigned? A. Yes" (1190).

• • • • • •

"Q. And then did you appear in the Felony Court the next morning (Tuesday)? A. Yes, I did" (1314) (from testimony of Joseph C. Spano; this is the only quoted testimony which was not given by a witness for the People).

The Court, in its incorrect charge, referred to a 36-hour delay (2189-2193). The Court was wrong. The delay was of 40 hours' duration, running from 6 P. M. on Sunday, May 11, to 10 A. M. Tuesday, May 13.

*The petitioner was subjected to improper psychological pressure.*

During the period of unlawful detention, petitioner was compelled to witness and submit to a police performance consisting of false identification. Three detectives falsely represented that they had seen petitioner at the scene of the crime. Quoting from the District Attorney's opening statement:

"The following morning the detectives decided something had to be done if they were going to get

> anywhere with this case. They thereafter sent to New York for two female detectives from the Pickpocket Squad and another detective named Gavin, who they thought looked nothing like a detective, and these defendants were placed in a room and one by one these witnesses, alleged witnesses, were brought in, and they ostensibly identified these defendants as perpetrators of the crime, although they were not actually witnesses to the crime" (82-83).

The testimony of the three detectives is lengthy and not quoted herein. It appears at folios 792 to 830, and 835 to 861 of the record.

*There was no other proof of guilt.*

Establishing the fact that there were no witnesses to the crime, and, therefore, that the coerced confessions constituted the sole basis for the conviction, we quote the following from the testimony of Police Captain John J. McGowan:

> "Q. I ask you now, of your own knowledge, up to the time that you came to the station house, is it not a fact that no eyewitness had identified any one of the defendants as committing this crime? A. No eyewitnesses had identified him" (1181).

The District Attorney's opening statement conceded that petitioner was not identified as a perpetrator of the crime:

> "I want to say further that the confession made by these people will be substantiated as to some of the details by the persons who were there at the time, although they cannot identify these people as the perpetrators of the crime" (89).

From the foregoing, and from a review of the record as a whole, it appears that ten different police officers and detectives participated in the questioning and false identification during the forty hours while petitioner was

held in custody without arraignment. This does not include members of the police force who were stenographers, and who likewise were present, nor the Assistant District Attorney who appeared late in the evening of Monday, May 12th.

We do not quote from the testimony of Joseph C. Spano, an attorney retained by defendant's family and who was given false information concerning petitioner's detention (1297-1332), nor the testimony of the several defendants to the effect that they were beaten, held without food, threatened and abused, nor the testimony of various members of the defendant's family to the effect that they made attempts to see defendant while he was in custody, but were likewise given false information.

## The Federal Question Raised Below.

The basis upon which a review is sought in this court is the improper admission of confessions procured through coercion and duress during a period of illegal confinement before your petitioner was arraigned. At the trial, objection was made to the admission of such confessions at every conceivable stage, as will be demonstrated from the quotations set forth below. Counsel for petitioner objected:

1) At the time the confessions were first mentioned by a police officer;

2) When the confessions were offered in evidence;

3) After the confessions were admitted in evidence, by a motion to strike them from the record;

4) By exceptions taken to the Judge's charge with respect to said confessions.

To substantiate the contention that these objections were properly and timely made, we quote from the record of the trial:

> "Mr. Barshay: I move to strike out any admission made by the defendant Bonino or the defendant Caminito on the ground that it was obtained involuntarily.
>
> "The Court: There is nothing in this record yet of any admissions, sir, unless you want to make them" (484).
>
> • • • • • •
>
> "Mr. Barshay: • • • I ask your Honor to exclude the statement of the defendant Caminito on the ground that as a matter of law it is an involuntary statement. Take my exception.
>
> The Court: Yes, motion denied. Exception to defendant" (696-7).
>
> • • • • • •
>
> "Mr. Barshay: On behalf of the defendant Caminito and on behalf of the defendant Bonino, I move to exclude the reading of these statements to the jury on the ground that they were involuntarily obtained.
>
> "The Court: Motion denied.
>
> "Mr. Barshay: Exception."
>
> • • • • • •
>
> "Mr. Barshay: I have the same objection on the same grounds as before.
>
> "The Court: Objection overruled" (939).

The foregoing quotation must be read in connection with the objection made to the admission of the confession by a co-defendant, which objection reads as follows:

> "Mr. Barshay: I renew my motion on the same grounds, that it was involuntarily obtained.
>
> "The Court: Motion denied; exception to the defendant" (915).
>
> • • • • • •

"Mr. Barshay: First I move to strike out each confession submitted in evidence on the ground that each was obtained involuntarily and in violation of law.

"The Court: Motion is denied" (1212).

• • • • • •

"Mr. Barshay: Now I ask your Honor to dismiss the indictment on the ground that by competent legal proof the People have failed to present a prima facie case.

"The Court: Motion denied.

"Mr. Barshay: And I move to dismiss the indictment on the ground that the People have failed to prove the defendants Bonino and Caminito guilty beyond a reasonable doubt as a matter of law.

"The Court: Motion denied" (1214-1215).

The following is from the incorrect charge of the Court:

"An unnecessary delay, although prohibited by the provisions of Section 165 of the Code, does not exclude a confession, but may or may not affect its voluntary or involuntary character when considered with all the other evidence referring to this subject matter in question" (2192).

The Court denied proper requests to charge:

"Mr. Barshay: No. 14, sir.

(No. 14 reads as follows: "The conduct of the detectives in taking the defendant into custody and holding him in durance merely because he was suspected of the commission of an alleged crime, in order to obtain statements from him before formal complaint and arraignment and before he could see friends and counsel, is without legal sanction and that such circumstances are properly to be considered by the jury in determining the voluntariness of the alleged confessions of the defendants.")

"The Court: I refuse to charge except as I have already charged" (2231-2232).

## Argument.

The principles of law which govern the disposition of this petition are thoroughly known to the Court. The decision of the New York Court of Appeals is completely inconsistent with the applicable cases decided by this Court. *Leyra v. Denno,* decided by the Supreme Court on June 1, 1954, is the most recent in a long line of decisions which reversed convictions procured through the use of confessions obtained by means of psychological pressures or physical torture or abuse, or where illegal detention for a long period of time occurred.

The applicable rule of law is clearly stated in the *Leyra* case:

> "The use in a state criminal trial of a defendant's confession obtained by coercion—whether physical or mental—is forbidden by the Fourteenth Amendment."

In our view, the opinions in the cases of *Leyra v. Denno,* and *Malinski v. New York,* 324 U. S. 401, in both of which cases this Court reversed the Court of Appeals of the State of New York, constitute sufficient justification for entertaining this application and for a reversal. In the *Malinski* case there was no question whatsoever as to the guilt of the defendant. Confessions made by him which were perfectly admissible were ample to justify the conviction. The reversal, however, was required as a matter of due process by reason of the admission of other confessions to the police, which confessions, in the view of the Court, were improperly obtained. In that case, as in this case, there were complaints that the defendant was subjected to physical violence. The Court disregarded that factor because it was disputed. It was not disputed, however, that the defendant in the *Malinski* case was held by the police from Friday morning, October 23, 1942,

until 4 A. M. on the following Tuesday, when he was arraigned. Defendant made two confessions to the police, one about 5:30 or 6 P. M. on the Friday when he was taken into custody. The second confession was made on Tuesday, October 27th. Both confessions were improperly admitted into evidence. The present case, however, is even more shocking than the *Malinski* case, in that this petitioner was kept totally incommunicado in spite of the fact that relatives and an attorney attempted to see him without success. In the *Malinski* case the defendant was permitted to consult with a friend.

We quote the following from the opinion of the Court in the *Malinski* case. From the majority opinion:

> "• • • the question whether there has been a violation of the due process clause of the Fourteenth Amendment is one on which we must make an independent determination on the undisputed facts.
>
> "If the attendant circumstances indicate that the confession was coerced or compelled, it may not be used to convict a defendant (*Ashcraft v. Tennessee*, 322 U. S. 143). And if it is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict (*Lyons v. Oklahoma*, 322 U. S. 596, 597" (p. 404).

Concerning the first confession, the Court referred to the fact that the claimed beatings were denied, stating:

> "Malinski was held incommunicado; he was not allowed to see a lawyer, though he asked for one, and he was not allowed to see friends with one exception" (p. 405).
>
> "• • • the confession of October 23rd was the product of fear—one on which we could not permit a person to stand convicted for a crime" (p. 407).

> "* * * we must consider the case, therefore, as one in which a coerced confession was employed to obtain a conviction. Coerced confessions would find a way of corrupting the trial if we sanctioned the use made of the October 23rd confession in this case. Constitutional rights may suffer as much from subtle intrusions as from direct disregard" (p. 410).

Accordingly, the Court refused to permit the first confession, made about 10 hours after the arrest, to stand. In the case at bar, it should be observed that the defendant steadfastly maintained his innocence for a period of 27 hours.

Concerning the second confession, the opinion of Mr. Justice Frankfurter states:

> "Considering the circumstances of Malinski's detention, the long and continuous questioning, the wilful and wrongful delay in his arraignment and the opportunity that that gives for securing, by extortion, confessions such as were introduced in evidence, the flagrant justification by the prosecutor of this illegality as a necessary police procedure, inevitably calculated to excite the jury—all these in combination are so below the standards by which the criminal law, especially in a capital case, should be enforced, as to fall short of due process of law" (pp. 417-418).

The *Leyra* and *Malinski* cases do not stand alone. They are but milestones in a long series of similar cases in which this Court has consistently held that due process is violated under circumstances such as exist in the instant case.

Extensive quotation from the applicable authorities appears unnecessary. Accordingly, we set forth briefly the conclusions reached in those cases which we consider most pertinent on their facts.

In *Chambers v. Florida,* 309 U. S. 227, the petitioners were subjected to continuous questioning for several days and were not permitted to see counsel, friends or relatives. This Court held that the confessions violated due process.

In *White v. Texas,* 310 U. S. 530, under similar circumstances, the Court again held that the confession was invalid.

In *McNabb v. United States,* 318 U. S. 332, the petitioners were arrested on a Thursday, between 1 and 2 A. M., and were questioned almost continuously until 2 A. M., Saturday morning, when they confessed. They were not permitted to see friends or relatives or attorney. The conviction was reversed.

In *Ashcraft v. Tennessee,* 322 U. S. 143, the petitioner was held incommunicado for a period of 36 hours before he was arraigned before a Magistrate. Despite the existence of evidence sufficient to convict without the use of confessions, it was held that there was a violation of due process.

In *Harris v. South Carolina,* 338 U. S. 68, it was again held that confessions procured prior to a delayed arraignment through systematic and persistent interrogation over long periods of time, in the absence of friends or relatives, was inadmissible as a violation of due process.

The same ruling was rendered in *Turner v. Pennsylvania,* 338 U. S. 62, and in *Watts v. Indiana,* 338 U. S. 49.

In *Haley v. Ohio,* 332 U. S. 596, the petitioner was arrested at midnight, October 19, 1945. He was questioned by the police for five hours without an opportunity to consult friend or counsel. After five hours, and after being shown confessions of others, he confessed. Thereafter, he was held incommunicado until October 23rd, when

he was taken before a Magistrate. The judgment of conviction was reversed as a violation of due process.

In *Upshaw v. U. S.*, 335 U. S. 410, petitioner was detained for 34 hours. The evidence shows that he was not physically mistreated, nor subjected to psychological pressure. Nevertheless, it was held that the confessions obtained during said time were wrongful and inadmissible.

We contend that this Court cannot overlook these compelling authorities. The fact that the defendant was held incommunicado for a period of forty hours before arraignment, that there was persistent interrogation over long periods of time by squads of police officers; that he was not permitted to see members of his family who inquired about him; that he was not permitted to see an attorney who had been retained for him; that he was kept overnight in a cell which had no sleeping facilities, that he was subjected to trickery and deceit by being confronted with false witnesses, all indicate without question that he was a victim of the type of psychological pressure which is totally inconsistent with the constitutional and statutory safeguards to which he was entitled. A review of the record shows that petitioner, after persistent questioning for many hours, was emotionally and physically exhausted. It is not surprising, therefore, that the so-called confessions are in substantial accord with the suggestions made to him by the detectives who questioned him.

Under the circumstances, the applicable rule to be followed should be consistent with this Court's determinations in the cases referred to herein. We see no difference between this case and the *Leyra* case, in which this Court said:

> "We hold that the use of confessions exacted in such a manner from a lone defendant unprotected by counsel is not consistent with due process of law, as required by our Constitution."

This defendant is serving a term of life imprisonment. Without the use of the confessions admitted in evidence against him, the conviction could not possibly stand. The confessions were procured in an illegal fashion. This Court has an opportunity to remedy what appears to be a serious injustice. We urge that it entertain jurisdiction on this application in order that justice may be accomplished consistent with the authorities in this Court.

WHEREFORE, petitioner, Santo Caminito, respectfully prays that a writ of certiorari may issue out of and under the seal of this Court, directed to the Court of Appeals of the State of New York, commanding the said Court to certify and send to this Court for review and determination as provided by law this cause and a complete transcript of the record and all the proceedings had herein, to the end that the judgment of the Court of Appeals of the State of New York affirming the judgment in this cause may be reversed and that the petitioner may have such other and further relief as to this Court may seem just and proper.

Dated: New York, N. Y., June 28, 1954.

MAURICE EDELBAUM,
Counsel for Petitioner.

MAURICE EDELBAUM,
STANLEY L. GLUCK,
Of Counsel.

State of New York,
County of New York, ss:

I hereby certify that I have examined the foregoing petition for a writ of certiorari and that in my opinion it is well founded and the cause is one in which the petition should be granted.

MAURICE EDELBAUM,
Counsel for Petitioner.

Sworn to before me this
28th day of June, 1954.
STANLEY L. GLUCK,
Notary Public,
State of New York
No. 24-1460950
Qualified in Kings County
Certs. filed with Co. Clk. N. Y. Co. and
Reg. Kings & N. Y.
Term Expires March 30, 1955.

## APPENDIX.

Memorandum of Appellate Division of the Supreme Court, Second Department, December 22, 1942 (265 App. Div. 960).

> "Judgment unanimously affirmed. No opinion. Hagarty, Johnston, Adel and Taylor, J.J., concur; Lazansky, P.J., concurs, with the following memorandum: Refusal to charge as requested at folio 2231 was error. However, the significance of the error was overshadowed by emphatic statements in the charge of the law in respect of the same subject matter."